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S.D.N.Y. - N.Y.C.
01-cv-11304
Jones, J.
08-cv-5067
Wood, C.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 30th day of July, two thousand eight,

Present:

Hon. Sonia Sotomayor,
Hon. Robert A. Katzmann,
Hon. Richard C. Wesley,
Circuit Judges.

Prince Backman,
Petitioner-Appellant,

v.

08-3285-op

Superintendent George Duncan,
Respondent-Appellee.

Prince Backman,
Petitioner-Appellant,

v.

08-2938-op

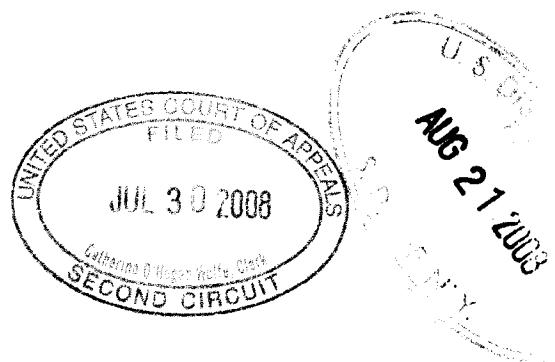
Superintendent Robert Ercole, Green Haven
Correctional Facility,
Respondent-Appellee.

The two above-captioned matters, which both concern the same application for relief under 28 U.S.C. § 2244(b), are consolidated for purposes of this order. In the proceeding docketed under 08-2938-op, Petition was instructed to file the application. However, the subsequently filed

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- Issued as Mandate. -

08/20/08



application was given a new docket number, 08-3285-op and was not filed under 08-2938-op. In his application, Petitioner, *pro se*, requests an order authorizing the United States District Court for the Southern District of New York to consider a second or successive 28 U.S.C. § 2254 petition. Upon due consideration, it is hereby ORDERED that the application is DENIED, and both proceedings DISMISSED, because Petitioner has not satisfied the criteria set forth in 28 U.S.C. § 2244(b). Petitioner has failed to show that “the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court,” or that “the factual predicate for the claim could not have been discovered previously through the exercise of due diligence.” 28 U.S.C. § 2244(b)(2).

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

By: Richard Alcantara
Richard Alcantara, Deputy Clerk

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A TRUE COPY
Catherine O'Hagan Wolfe, Clerk
by _____
DEPUTY CLERK